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ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo

(510) 238-3601
FAX: (510) 238-6500
TDD: (510) 839-6451

January 6, 2004

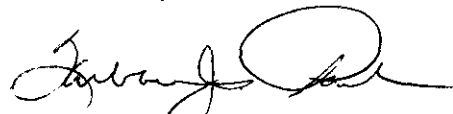
HONORABLE CITY COUNCIL
Oakland, California

President De La Fuente and Members of the City Council:

Subject: Maureen Dorsey, et al. v. City of Oakland, et al.
Alameda County Superior Court
No. RG-03077607
Our Matter No. X01742 (CEDA/Leona Quarry project)

Pursuant to Section 401 of the Charter, the City Attorney recommends settlement of the above-entitled matter. This case involves a challenge to the environmental impact report for the Leona Quarry project, which the City Council certified on December 3, 2002. The settlement requires that the City consider in good faith specific project modifications, including (1) an increase in the size of the project's detention basin from the previously-approved minimum of 14 acre-feet to 25 acre-feet, (2) the substitution of a cash contribution of \$500,000 for the project's senior affordable housing component, (3) additional geotechnical requirements, and (4) additional traffic studies and mitigation. The City would consider these project modifications upon completion of the pending environmental review process.

Respectfully submitted,


for JOHN A. RUSSO
City Attorney

Attorney Assigned:
Heather B. Lee

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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Resolution Authorizing and Directing the City Attorney to Compromise and Settle the Case of Maureen Dorsey, et al. v. City Of Oakland, et al., Alameda County Superior Court Case No. No. RG-03077607

WHEREAS, on December 3, 2002 the City Council adopted Resolution No. 77544 C.M.S., which approved reclamation and redevelopment of the existing Leona Quarry mine, located at 7100 Mountain Boulevard with 477 residential units ("Project"); and

WHEREAS, on or about January 2, 2003, Maureen Dorsey, Burckhalter Neighbors and Citizens for Oakland's Open Space, Inc. (collectively, "Petitioners") filed a lawsuit in Alameda County Superior Court (Case No. RG-03077607) challenging the City's approval of the Project; and

WHEREAS, the City Council, Petitioners and the Project sponsor wish to fully and completely resolve their disagreements relating to the Project without the need to litigate the issues any further; Now, therefore, be it

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the case of Maureen Dorsey, et al. v. City of Oakland, et al., Alameda County Superior Court Case No. RG-03077607 and take whatever steps may be necessary to effect said settlement, including without limitation entering into a settlement agreement in substantial conformity with **Attachment A**.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2003

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

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ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

ORIGINAL

LEONA QUARRY
SETTLEMENT AGREEMENT

December __, 2003

Oakland, California

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ATTACHMENT A

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LEONA QUARRY SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made as of this _____ day of December, 2003, by and between MAUREEN DORSEY, BURCKHALTER NEIGHBORS, and CITIZENS FOR OAKLAND'S OPEN SPACE, INC. (collectively, the "Petitioners"), the CITY OF OAKLAND and OAKLAND CITY COUNCIL (collectively the "City"), and THE DeSILVA GROUP, LLC ("Real Party"). The Petitioners, the City, and Real Party are sometimes collectively referred to as the "Parties."

RECITALS

WHEREAS, the Leona Quarry Project involves a proposed residential development and associated community and recreational facilities (the "Project") at the former quarry location at 7100 Mountain Boulevard in Oakland, California;

WHEREAS, the City prepared and certified a Final EIR and granted various approvals for the Project including adoption of Resolution 77544 and Ordinance 12457;

WHEREAS, in January 2003 the Petitioners filed an action in the Superior Court for the County of Alameda, entitled *Maureen Dorsey, et al. v. City of Oakland, et al.*, Case No. RG03077607 (the "Action"), challenging the adequacy of the Final EIR under CEQA for the Project in the first cause of action, and including allegations relating to Business and Professions Code section 17200 in the second cause of action;

WHEREAS, the Superior Court issued an "Amended Judgment Granting Petition for Writ of Mandate" on August 5, 2003, and a "Second Amended Peremptory Writ of Mandate" ("Writ") on August 29, 2003, and the second cause of action remains pending;

WHEREAS, the Parties have engaged in settlement discussions and have reached a compromise regarding the measures to be taken to settle the Action;

WHEREAS, the Parties therefore desire to settle, compromise, and resolve all disagreements, differences and disputes which exist between them in order to bring all claims and all causes of action in the Action to a final conclusion and to avoid incurring further costs and expenses as a result of litigating the Action; and

WHEREAS, it is in the interest of the public and judicial economy for the Parties to resolve all of the claims and disputes at issue in the Action without further litigation;

NOW, THEREFORE, in consideration of the foregoing, and of the respective promises and releases herein, the Parties agree as follows:

I. OBLIGATIONS OF REAL PARTY

A. Project Modifications.

Real Party shall, upon fulfillment of the conditions set forth in section I.B below, implement the following modifications to the Project.

1. Stormwater Management System.

Real Party and Petitioners shall jointly request the City to modify the Project to impose the following conditions upon the Project which shall be implemented by Real Party if the City approves such modification: Real Party shall provide on-site capacity for detention of storm water flows by increasing the detention capacity on the entire Project site to 25 acre-feet. Certain details regarding the detention basin are set forth in the attached Hydrology Exhibit, HYD- 1. The City will obtain from its peer reviewer for Project hydrology, Philip Williams and Associates, Ltd. (PWA), concurrence on how to use the 25 acre feet of detention capacity to reduce existing stormflows downstream from the Project site by meeting the following minimum standards, using parameters recommended by PWA in its reports dated November 20, 2002, and June 10, 2003, including modeling Ponds 1 and 2 as initially empty. The minimum standards

are: post-project, 25-year, 24-hour peak flows from the site not to exceed 172 cfs; and post-project, 100-year, 24-hour peak flows from the site to be equal to or less than the existing peak flows from the site. Real Party will implement the recommendations from PWA regarding use of the 25 acre feet of detention capacity, and the City will have PWA determine whether these PWA recommendations have been implemented. Upon completion of the stormwater management system, the City will obtain a letter from PWA confirming that the system has been completed in substantial conformance with these PWA recommendations. Promptly after its receipt thereof, the City will provide copies of the PWA letter to Petitioners and Real Party.

2. Substitution Of Cash Contribution For Gateway Senior Housing Component.

(a) Real Party and Petitioners shall jointly request that the Project be modified to allow Real Party not to include the Gateway Senior Housing component in the Project, and allow the area on which that component was to be constructed to be landscaped for passive uses and improved for ride-sharing activities as shown on the attached Gateway Area Exhibit, GW- 1. This area will not be utilized for housing or commercial uses. In connection with the joint request that the Gateway Senior Housing component not be constructed as part of the Project, Real Party and Petitioners shall also jointly request the City to add a condition of approval limiting the number of residential units on the Lower Development Area (as that term is used in the Final EIR) of the site to the remaining 404 residential units included in the Lower Development Area. This provision shall not limit the ability to remodel or replace structures on the Project site.

(b) If such modifications are approved by the City, Real Party agrees that it will implement them. In lieu of the Gateway Senior Housing component, Real Party agrees to contribute Five Hundred Thousand Dollars (\$500,000.00) to support alternate senior affordable

housing project(s) selected and approved by the City. Real Party will fund the \$500,000.00 at the time the City has approved an alternate project consistent with this paragraph. Examples of projects consistent with this paragraph would be the proposed Lincoln Court Senior Housing project with eighty (80) senior affordable units located on the corner of Lincoln and MacArthur Blvd. and the proposed senior residential project at the Altenheim.

3. Emergency Vehicle Access (EVA) Improvements.

Real Party and Petitioners shall jointly request the City to modify the Project to impose conditions upon the Project to achieve the following, and if the City approves such modification, Real Party shall implement the following:

(a) Altura Place EVA: 1) The constructed EVA to Altura Place will be designed as a maintenance road for the development in order to discourage pedestrian and bicycle access to and from the Project and Altura Place. 2) The EVA roadway will be 12' wide following the alignment, configuration and details depicted in the attached EVA Exhibits: Altura Place, Exhibit EVA-1; Gate Detail, Exhibit EVA-2; Altura Photographs, Exhibit EVA-3; and Legal Description, Exhibit EVA-4. 3) The 12' wide gate will be 6' tall, and locked with a chain and padlock. 4) An Oakland Fire Department approved "Knox Box" will be attached to each gate. 5) The gate will abut the retaining wall as depicted in Exhibits EVA-1 and EVA-2 and will be designed to discourage pedestrian and bicycle access between the gate and the wall. 6) The gate will be connected to the existing fence on the common property line to discourage pedestrian and bicycle access. 7) The limits of construction will be per Exhibit EVA-1. 8) All constructed improvements outside of the Leona Quarry will occur within the existing 50' City Right of Way of Altura Place. 9) Signage will be placed on both sides of the gate prohibiting access except in an emergency. 10) For all modifications on Altura Place, all vehicles, trucks and equipment will

use the quarry entry and exit located on Mountain Blvd only. 11) No Project vehicles will use Altura Place or Leona Street to access or exit the project site during grading or construction.

(b) Northwestern EVA: 1) Within the Easement area on the Suchan property a 12' wide scored concrete road way will be constructed. 2) The roadway will follow the existing EVA alignment between the existing 6' fence and the existing drainage ditch all within the 20' existing easement. 3) A 6' sturdy cyclone fence will be erected to separate the Suchan property from the easement being used as the EVA, the length of the EVA between the gate at Leona Street, and the lower gate to the development. The dead apricot tree and the large rosebush that are in line with where the fence will go, will be cut down, and all such debris removed from the property. 4) All live trees will remain and be protected during construction. 5) Signage will be placed on the gates at the top and bottom of the easement area prohibiting access except in an emergency. 6) An Oakland Fire Department approved "Knox Box" will be attached to each gate. 7) For all modifications for the Northwestern EVA, all vehicles, trucks and equipment will use the Leona Quarry entry and exit located on Mountain Blvd only.

(c) For all modifications on Altura Place, and Leona Street, necessary to create secondary EVAs, all vehicles, trucks and equipment must use the quarry entry and exit located on Mountain Blvd.

(d) Real Party will not allow vehicles to use Altura Place, or Leona Street, to enter or exit the Project site during grading or construction.

(e) The EVA Improvements will be maintained by the HOA or other similar entity.

4. Geology.

Real Party and Petitioners shall jointly request the City to modify the Project to impose the following conditions upon the Project which shall be implemented by Real Party if

the City approves such modification: The City will obtain from its peer reviewer for geologic and geotechnical issues at the Project, Lowney Associates, concurrence on the appropriate steps to be taken to respond to the specific, numbered and itemized recommendations 1 and 2 made by Nicholas Sitar in a report dated November 15, 2003. Real Party will implement the recommendations from Lowney Associates regarding the appropriate steps to be taken to respond to these recommendations of Sitar, and the City will have Lowney Associates determine whether these Lowney Associates' recommendations have been implemented. The Parties agree that Real Party will implement the recommendations of Sitar (Items 3-5 of the November 15, 2003, report) and Seidelman (November 16, 2003, email and December 30, 2002, report), as directed by Lowney Associates. The November 15, 2003, Sitar report, the November 16, 2003, Seidelman email and the December 30, 2002, Seidelman report are attached as Geology Exhibits, GEO 1-3 for reference purposes only. Upon substantial completion of grading for the Project, the City will obtain a letter from Lowney Associates confirming that the Project has been developed in substantial conformance with these Lowney Associates recommendations. Promptly after its receipt thereof, the City will provide copies of the Lowney Associates letter to Petitioners and Real Party.

5. Traffic Improvements.

Real Party and Petitioners shall jointly request the City to modify the Project to impose conditions upon the Project to achieve the following, and if the City approves such modification, Real Party shall implement the following:

(a) Real Party agrees to leave with the City any "credits" due Real Party from the implementation of the Traffic Improvement Program related to the improvement work at intersections 1, 2, 4 and 8 (as numbered in the final EIR) rather than receiving said refunds. City agrees to earmark, set aside and use such credits for the traffic mitigations at the three (3)

intersections listed in (b) immediately below. Upon completion of the improvements related to the (b) intersections, Real Party shall be entitled to return of any remaining "credits".

(b) Regarding Intersections #9 (Keller@Fontaine), #7 (Keller@Mountain), and #27 (Mountain@I580 West bound), Real Party agrees to obtain traffic studies of these intersections after the 200th unit has been occupied and after the 423rd unit has been occupied. In the event either of those traffic studies reveals that the traffic existing at the time of the study has caused the LOS levels at any of the above intersections to fall to Level of Service "E" ("LOS E") or worse, Real Party will pay for and construct all of the traffic mitigations contained in the EIR for any of the three (3) intersections at LOS E or worse (i.e., #9, #7 and/or #27). City agrees that Real Party shall be entitled to utilize the credits it left with the City under subdivision (a) for this construction work.

(c) At the time of occupancy of the 150th unit, Real Party will provide to the HOA a Van Pool vehicle in new condition with seating capacity of at least twelve (12) and with at least standard features.

(d) Signage at the Coliseum and Airport: Real Party and City will cause signage to be placed in the area of the Oakland Airport and the Coliseum directing through traffic to use Seminary and 98th Ave. The City will require that the signage located at or near the Airport and Coliseum be placed in locations recommended by the City traffic engineer.

(e) Real Party and Petitioners will make a good faith effort to obtain permission from CALTRANS, and if approved, Real Party will fund both installation of new signage on I580 and Highway 13 indicating that Seminary and 98th Ave are the exits for the Airport and the Coliseum, and removal of inconsistent existing signage on I580 and Highway 13.

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6. Payments In Lieu Of Waivers or Modifications.

If the conditions referenced in sections I.A.1 through I.A.5(d) (the “Project Modifications”) above are imposed by the City, then Real Party shall not request any waiver of any such condition, nor seek to modify any such condition. Should the City nonetheless waive or modify any such condition, and should such waiver or modification result in a reduction in development or construction costs for Real Party, then Real Party shall pay the amount of the reduction to the City for use in District 6 to offset any impacts of the Project. Real Party agrees to waive the defense of impossibility as to the section I.A.2 and I.A.3 conditions.

7. No Involvement In Any Edwards Avenue Widening.

Real Party shall ensure that neither it, nor any of its affiliate companies, participate in the construction of, or lobby for contracts related to, any future widening of Edwards Avenue.

8. No Additional Development At Project Site.

(a) Neither Real Party nor its successors shall pursue any additional residential, commercial or civic development of the Leona Quarry beyond the development approved by the City in accordance with section III.A below. This provision shall not limit the ability to remodel or replace structures on the Project site.

(b) Real Party and Petitioners shall jointly request the City to modify the Project so that the language previously stated in Condition of Approval No. 32 of Resolution 77544, which required dedication of an open space and conservation easement to the City concurrent with submittal of the last final map for the Project, is restated in connection with any reapproval of the Project, and additionally provides that the easement shall be perpetual in nature and shall

constitute an interest in real property pursuant to Civil Code section 815.2. The HOA will be a co-grantee on the open space and conservation easement.

9. Compromise of Petitioners' Claim For Attorneys' Fees and Costs.

Real Party shall deliver one check made payable to Leila Moncharsh and Joseph Brecher, counsel for Petitioners, in the sum of \$139,481.86 in compromise of any claim Petitioners may have for costs, attorneys' fees and/or consultant fees relating to or arising out of the Action, the Project, or the mediation/settlement proceedings that resulted in this Agreement. Upon delivery of this check, Real Party, Gallagher and/or City shall have no obligation to pay any other fees or costs to the Petitioners or their counsel in any matter related to or arising out of the Action, the Project (as originally approved or as re-approved) or the mediation/settlement process. Real Party agrees to review invoices and pay reasonable consulting fees due to Professor Sitar and Professor Mauch for work related to the mediation.

B. Conditions To Obligations Of Real Party.

The obligations of the Real Party in section I.A (except the obligations to seek approvals from governmental entities) shall become effective only after all of the following conditions have been met: All of the Petitioners' obligations as set forth in this Agreement have been fully performed and completed; the City has adopted the Re-approval Resolution and the Modified Project Resolution referenced in section III.A below; the City has filed its return of the writ, the Superior Court enters the Order & Judgment as requested in the stipulation referenced in section II.C.2 below, and this Agreement has not been terminated. Further, Real Party shall be obligated to construct or implement each of the Project modifications referenced in sections I.A.1 through I.A.5(e) only if all approvals required to construct such modification have been granted and are in effect at the time of construction or implementation.

C. Waiver of Real Party's Costs.

Upon entry of the Judgment dismissing the second cause of action contained within the Order & Judgment, Real Party waives any right it has to collect costs (including attorneys' fees) relating to the Action.

D. Execution Of Stipulation for Order & Judgment.

Upon execution of this Agreement, Real Party shall execute a stipulation in the form attached as the Order & Judgment Exhibit, Exhibit A, for entry of an order and judgment as specified in that stipulation.

E. Indemnification by Real Party.

Upon execution of this Agreement, Real Party shall defend, indemnify, and hold harmless Petitioners from any claims of Gallagher Properties, Inc. ("Gallagher") related to the Action and assume all liability of Gallagher to Petitioners in the Action.

II. OBLIGATIONS OF PETITIONERS

All obligations of the Petitioners set forth in this Agreement extend to Petitioners, to all members of Burckhalter Neighbors and to all members of Citizens For Oakland's Open Space, Inc. Petitioners acknowledge that these persons and entities comprise all persons and entities on whose behalf Petitioners filed and pursued the Action.

A. Seek Approval Of Project Modifications.

Petitioners shall use good faith efforts and cooperate with Real Party in seeking City approval of the Project modifications as referenced in sections I.A.1 through I.A.5(d).

B. Stipulation For Entry Of Order & Judgment.

Upon request by Real Party or City, Petitioners shall execute a Stipulation for Entry of Order Discharging Peremptory Writ of Mandate and Lifting Stay, and Judgment On Second Cause of Action ("Stipulation"), in the form attached as the Order & Judgment Exhibit,

Exhibit A. The Stipulation shall request that the Superior Court enter an Order Discharging the Peremptory Writ of Mandate and Lifting Stay and a Judgment of Dismissal on the second cause of action (“Order & Judgment”), in the form attached to Exhibit B, and shall be presented to the Court at such time as the City files its return to Writ provided neither Petitioners nor Real Party has terminated this Agreement. Petitioners agree that the Order & Judgment, if and when executed by the Court, shall constitute a full and final resolution of all claims and all causes of action in the Action.

C. No Opposition To Project.

Effective immediately upon execution of this Agreement, each of the Petitioners agree not to raise any objections whatsoever before the Superior Court, or to any other court, or any administrative or legislative or executive agency, (including without limitation the Oakland City Council and the City of Oakland Planning Commission), with respect to the Stipulation or the Order & Judgment. The Petitioners further agree not to file any appeal of any decision entered in the Action. The Petitioners agree not to bring any lawsuit or other proceeding relating to any governmental approval or re-approval of any aspect of the Project, or any permit, certificate or license issued for the Project (as defined in this Agreement), including the Re-approval Resolution and Modified Project Resolution referenced below. The Petitioners agree not to take any actions of any kind, either directly or indirectly, to oppose or challenge any governmental approval or re-approval of any aspect of the Project, or any permit, certificate or license issued for the Project, including the Re-approval Resolution and Modified Project Resolution referenced below. The Petitioners agree not to provide any support of any kind, including but not limited to funding, to any person or entity who has, is currently, or may subsequently oppose or challenge any governmental approval or re-approval of any aspect of the Project, or any permit, certificate or license issued for the Project, including the Re-approval

Resolution and Modified Project Resolution referenced below. The Petitioners have reviewed the draft SEIR that has been completed for the Project. The Petitioners agree not to submit any oral or written comments adverse to the Project or to the SEIR to any public or private entity (including without limitation the Oakland City Council and the City of Oakland Planning Commission) The Petitioners agree not to seek or request, either directly or indirectly, any changes or modifications in any aspect of the Project, except as expressly set forth in this Agreement, or to seek or request any additional environmental review regarding any aspect of the Project. Nothing in this Agreement is intended to prevent Petitioners from opposing modifications to the conditions of approval for the Project other than the Project Modifications (as defined herein) or later modifications to the Project.

III. OBLIGATIONS OF CITY

A. Good Faith Consideration Of Project Modifications.

City acknowledges the obligations of all other Parties to this Agreement and expresses no opposition to this Agreement. City shall consider in good faith the approval of all Project modifications set forth in sections I.A.1 through I.A.5(d). City agrees to consider in good faith (a) adopting a resolution re-approving the Project and all of its components with only such modifications as the City deems appropriately result from the SEIR process (“Re-approval Resolution”), and (b) immediately thereafter, adopting a resolution approving the Project, as modified by the Project modifications set forth in sections I.A.1 through I.A.5(d) above (“Modified Project Resolution”), with (i) conditions requiring Real Party to implement such Project modifications to the extent required by this Agreement, (ii) language providing the Modified Project Resolution shall supersede the Re-approval Resolution only for so long as the Modified Project Resolution is not invalidated, vacated or set aside in whole or in part, and for only so long as this Agreement has not been terminated; and (iii) a provision specifying that the

City will not waive or modify the requirements of the Project Modifications specified in sections I.A.1 through I.A.5(d) unless, upon a duly noticed public hearing, the City Council has made a finding that the waiver or modification is necessary due to overriding concerns of public health, safety or welfare. City agrees to consider in good faith execution of a stipulation in the form attached as Exhibit A, for entry of an order and judgment in the form attached as Exhibit B. By entering into this Agreement, the City is not undertaking any obligations (x) to approve either Resolution, or (y) to approve any provision, term or condition that may be embodied in either Resolution, or (z) to exercise its discretion as to any such Resolution or any Project modification in any particular way. By entering into this Agreement, the City is not relinquishing any discretion it has under any law, including without limitation, CEQA, the Planning and Zoning Laws, its City Charter, ordinances, resolutions, plans and policies, or its police power. Any obligations of the City under this Agreement shall be enforced pursuant to section V.K (Enforcement of Agreement; Attorney's Fees), and under the standards set forth in Code of Civil Procedure section 1094.5.

B. Waiver of City's Costs.

Upon entry of the Judgment dismissing the second cause of action contained within the Order & Judgment, the City waives any right it has to collect costs (including attorneys' fees) from Petitioners relating to the Action.

IV. TERMINATION

This Agreement may be terminated by Real Party, within 14 days of the City's decision, if the City decides not to adopt the Project Modification Resolution containing only the modifications referenced in sections I.A.1 through I.A.5(d). This Agreement may be terminated by Petitioners, within 14 days of the City's decision, if the City decides not to adopt the Project Modification Resolution containing all the modifications referenced in sections I.A.1 through

I.A.5(d). This Agreement may also be terminated by Real Party or by Petitioners should Real Party or its successors abandon development of the Project or pursue development that is substantially different from the Project. Termination shall be effective upon delivery of written notice to all Parties. The Parties shall meet and confer regarding their dispute before terminating.

V. MISCELLANEOUS PROVISIONS

A. No Admission of Liability.

This Agreement is the compromise of disputed claims, and shall not in any way be construed as an admission by the City or Real Party that they or their respective parents, subsidiaries, affiliates, insurers, officers, employees, agents, successors or heirs have acted wrongfully or unlawfully with respect to the Project or that the Petitioners have any rights whatsoever against the City or Real Party for any purpose whatsoever. The City and Real Party expressly deny any violation of any federal, state or local law.

B. Responsibilities of Parties Not Otherwise Affected.

Nothing in this Agreement is intended to suggest or imply that Petitioners have participated in the planning, design or construction of any aspect of the Project. Real Party and City agree that Petitioners have no liability arising from the planning, design or construction of any aspect of the Project. Nothing in this Agreement affects any liability Real Party or the City may or may not have arising out of the approval, planning, design or construction of any aspect of the Project.

C. Entire Agreement.

This Agreement constitutes the full and complete agreement of the Parties, and supersedes all prior agreements, representations and understandings, whether oral or written. No

representation, promise, statement, agreement or understanding, oral or written, which is not contained herein, shall be recognized or enforced.

D. Sufficient Information.

Each Party declares that prior to the execution of this Agreement, it or its duly authorized representatives have apprised themselves of sufficient relevant data, either through experts or other sources of their own selection, in order that each Party might intelligently exercise its judgment in deciding whether to execute, and in deciding on the contents of, this Agreement. Each Party assumes the risk that facts, other than those facts that are represented or warranted to be true in this Agreement, may later be found to be other than or different from the facts now believed by it to be true. Each Party declares that its decision to execute this Agreement is not influenced by any representation not contained in this Agreement.

E. Authorization.

Each undersigned representative of the Parties hereto represents and warrants that he or she is fully authorized to enter into and execute the terms and conditions of this Agreement, and to legally bind such Party to this Agreement.

F. Own Expense.

Each Party to this Agreement shall at its own expense perform all acts and execute all documents and instruments that may be necessary or convenient to carry out its obligations under this Agreement. Nothing in this Agreement abrogates or limits any of Real Party's on-going obligations to indemnify, defend and hold harmless the City, which include, without limitation, expenses relating to this Agreement and its implementation. Real Party assumes all liability of Gallagher to the City in connection with the Action and the Project.

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G. Construction of Agreement.

The Parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In construing this Agreement, no term or provision shall be construed against any Party solely by reason of such Party having drafted the same. In cases of uncertainty this Agreement shall be construed without regard to which of the Parties caused the uncertainty to exist. The headings of this Agreement are for ease of reference only and shall be disregarded in interpreting this Agreement.

H. Successors.

This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns and personal representatives of the Parties.

I. No Rights Conferred on Third Parties.

Nothing in this Agreement, whether express or implied, is intended to confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express Parties to it, their respective permitted successors and assigns.

J. Amendment or Waiver.

No amendment of, supplement to or waiver of any obligations under or provisions of this Agreement shall be enforceable or admissible unless set forth in a writing signed by the Party against which enforcement or admission is sought. No failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated.

K. Enforcement of Agreement; Attorneys' Fees.

1. Judicial Review Upon Noticed Motion.

The Parties agree that the Superior Court will retain jurisdiction over the Parties for the purpose of hearing and determining any disputes between the Parties relating to

compliance with the terms of this Agreement and for the purpose of enforcement of the Agreement. Under no circumstances will the terms of the Agreement be incorporated into the Order & Judgment; provided however that the language of the prior sentence will be incorporated into the Order & Judgment, Exhibit B. Any Party wishing to resolve a dispute or seek court enforcement of the Agreement will do so by the filing of a noticed motion rather than by filing of a new proceeding. The Parties will jointly request that the court retain jurisdiction to accomplish the foregoing; provided that the jurisdiction of the court will terminate on the completion of the improvements referenced in sections I.A.1-I.A.5, inclusive, of the Agreement.

2. Informal Dispute Resolution.

The Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy regarding the interpretation or application of this Agreement prior to seeking judicial review of the dispute, claim or controversy. Any Party may initiate negotiations by providing notice in letter form to each of the other Parties. Such notice shall be provided within fifteen (15) days of the date on which the disputing Party was given notice of, or otherwise knew or should have known, of the circumstances giving rise to the dispute. If the dispute is not resolved in the meanwhile, representatives of the disputing Parties will meet at a mutually agreeable time and place within thirty (30) days of the date of the initial notice in order to exchange relevant information and perspectives and to attempt to resolve the dispute. A second meeting to attempt to resolve the dispute shall be held at a mutually agreeable time and place within fifteen (15) days of the first meeting.

3. Timeline for Judicial Review.

Any motion to enforce the provisions of section I.A.1 (Stormwater Management System) or section I.A.4 (Geology) of this Agreement must be filed and served within 90 days of the date on which notice of the letter(s) from the City's peer reviewer(s) is given by Real Party to

Petitioners, and if no such notice is given, within 90 days from the date Petitioners either knew or should have known that there was no compliance with these provisions of the Agreement. Any motion to enforce the provisions of any other section of this Agreement must be filed and served within 90 days of the date on which notice of compliance is given by Real Party to Petitioners, and if no such notice is given, within 90 days from the date the Party either knew or should have known that there was no compliance with those provisions of the Agreement. In any motion or action to enforce this Agreement, the prevailing Party or Parties shall be entitled to recover their costs, including reasonable attorney fees.

L. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and counterpart signature pages may be assembled to form a single original document. Signatures received via facsimile transmission shall in all respects be deemed to be original signatures.

M. Notices.

Any notices permitted or required by this Agreement shall be delivered to the following:

**1. PETITIONERS (MAUREEN DORSEY,
BURCKHALTER NEIGHBORS, and/or CITIZENS
FOR OAKLAND'S OPEN SPACE, INC.)**

Maureen Dorsey
C/o Oakland Veterinary Hospital
4258 MacArthur Blvd.
Oakland, CA 94619

Burckhalter Neighbors
C/o Oakland Veterinary Hospital
4258 MacArthur Blvd.
Oakland, CA 94619
and
7400 Greenly Dr.

Oakland, CA 94605

Citizens for Oakland's Open Space, Inc.
PO Box 20391
Oakland, CA 94620
and
5458 Fernhofs Road
Oakland, CA 94619

With copies to:

Leila H. Moncharsh
Veneruso & Moncharsh
440 Grand Ave., Suite 360
Oakland, CA 94610-5012

2. CITY (CITY OF OAKLAND and/or OAKLAND CITY COUNCIL)

Development Director/Planning Director
250 Frank H. Ogawa Plaza, Suite 3330
Oakland, CA 94612-2032

and

Building Services/Engineering Services Director
250 Frank H. Ogawa Plaza
Oakland, CA 94612

With copies to:

John Russo, City Attorney and Heather Lee, Sr. Deputy City Attorney
City of Oakland
Office of the City Attorney
1 Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612

3. REAL PARTY (THE DeSILVA GROUP, LLC)

James B. Summers, President
Michael Willcoxon, General Counsel
The DeSilva Group
11555 Dublin Blvd.
P.O. Box 2922
Dublin, CA 94568

With copies to:

Stephen L. Kostka
Marie A. Cooper
Bingham McCutchen, LLP
1333 N. California Blvd., Suite 210
Walnut Creek, CA 94596-1270

N. Releases.

1. Each Party acknowledges that all claims and causes of action relating to the subject matter of the Action shall be merged into and barred by the Order & Judgment. Any claims not merged into or barred by the Order and Judgment that relate to the Project are waived and released. Each Party understands that it may have sustained damages that arise or may arise out of or relate to the Action that may not have manifested themselves and that are presently unknown. The waivers and releases in this Agreement include waivers and releases of any claims for those damages. The waivers and releases in this Agreement also include waivers and releases of any other claims for unknown or unanticipated injuries, losses, or damages arising out of or relating to the Action.

2. Each Party waives, with respect to claims relating to the Project, all rights or benefits that it has or may have under Section 1542 of the Civil Code of the State of California to the extent it would otherwise apply. Section 1542 reads as follows:


A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

3. Each Party agrees that it will not commence, maintain, continue or voluntarily assist in any way in the prosecution by any other person or entity of any claim against the other, any related corporate entity, or any present or former employee of the other, relating to any matter waived or released in this Agreement.

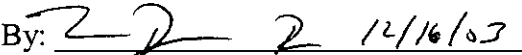
4. Real Party (including successors, assigns and any person or entity identified as an "Applicant" in the Project conditions of approval) waives, releases and covenants not to sue the City regarding any claim that the modifications referenced in section I of this Agreement have no nexus, rough proportionality or reasonable relationship to the Project.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement, to become a binding agreement as of the date above, with obligations to be effective as set forth in this Agreement.

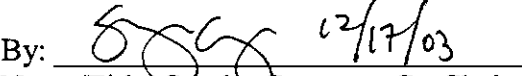
PETITIONERS: MAUREEN DORSEY

 12/16/03
Maureen Dorsey

BURCKHALTER NEIGHBORS

By:  12/16/03
Name/Title: Maureen Dorsey, Co-Chairperson

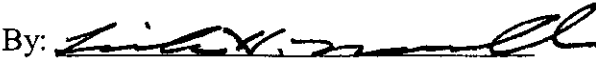
BURCKHALTER NEIGHBORS

By:  12/17/03
Name/Title: Sparky Carranza, Co-Chairperson

CITIZENS FOR OAKLAND'S OPEN SPACE, INC.

By: _____
Name/Title: Judi Bank, President

Approved as to
Form: VENERUSO & MONCHARSH

By: 
Leila Moncharsh
Attorneys for Petitioners
Dated: 12/16, 2003

CITY: CITY OF OAKLAND and OAKLAND CITY COUNCIL

By: _____
Name/Title: _____

Approved as to

Form: By: _____
Heather B. Lee, Deputy City Attorney
Dated: _____, 2003
Resolution No. _____
PA# _____

REAL PARTY: THE DeSILVA GROUP, LLC

By: James B. Summers 12.16.03
Name/Title: James B. Summers, President

Approved as to

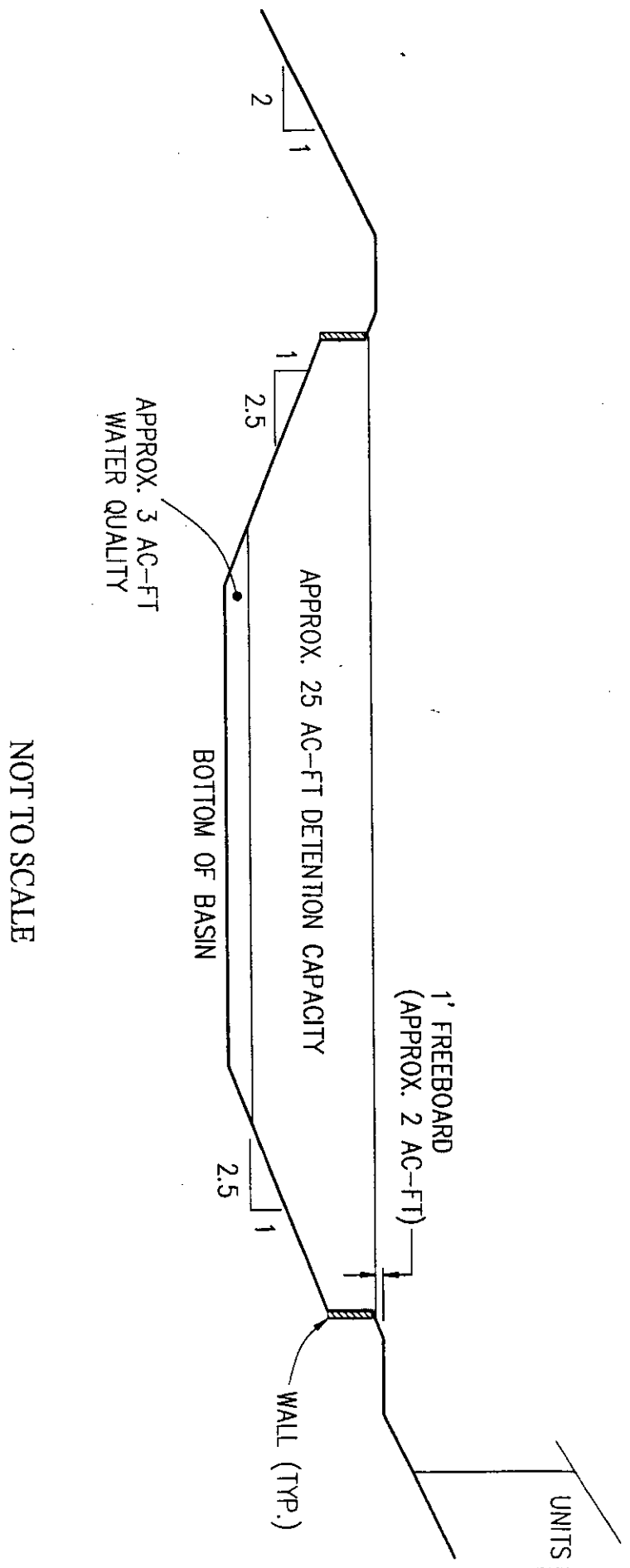
Form: LAW OFFICES OF MICHAEL WILLCOXON

By: Michael Willcoxon
Michael Willcoxon
Attorney for The DeSilva Group, LLC
Dated: 12/16, 2003

10.11 CC
ORA/COUNCIL
JAN 6 2004

HYDROLOGY EXHIBIT

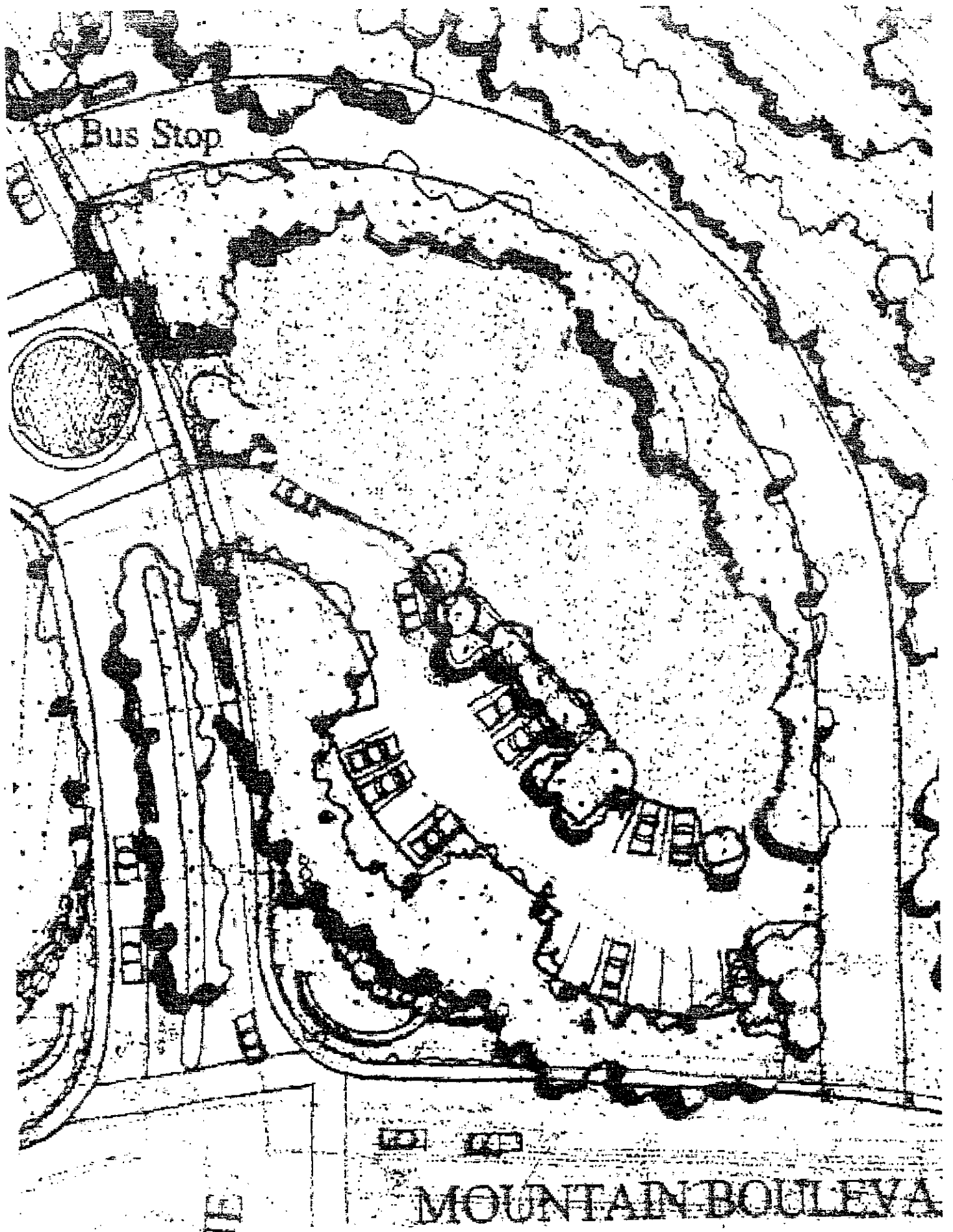
LOWER DETENTION BASIN
LEONA QUARRY
OAKLAND, CA



NOT TO SCALE

DECEMBER 4, 2003

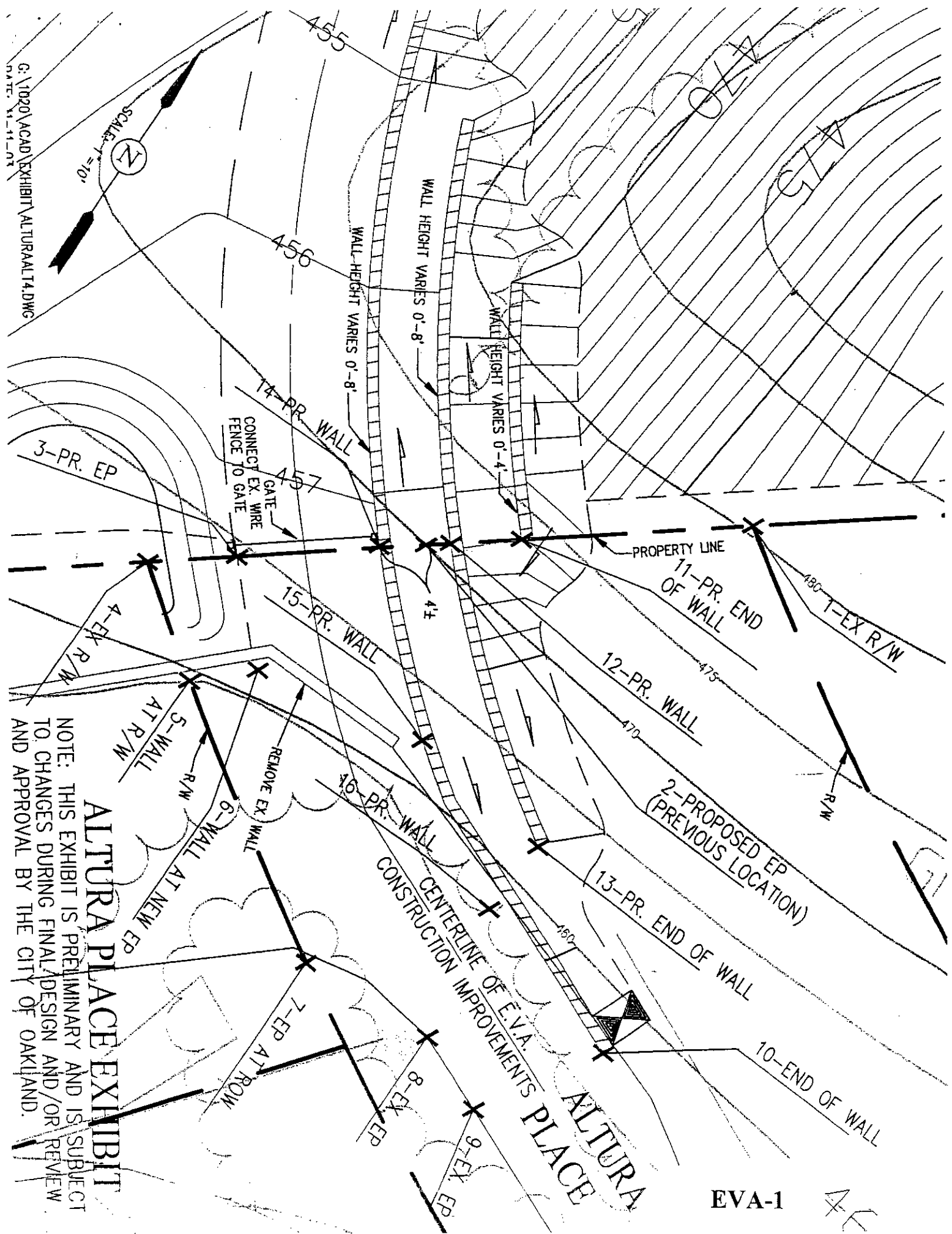
GATEWAY AREA EXHIBIT



Bus Stop

MOUNTAIN BOULEVARD

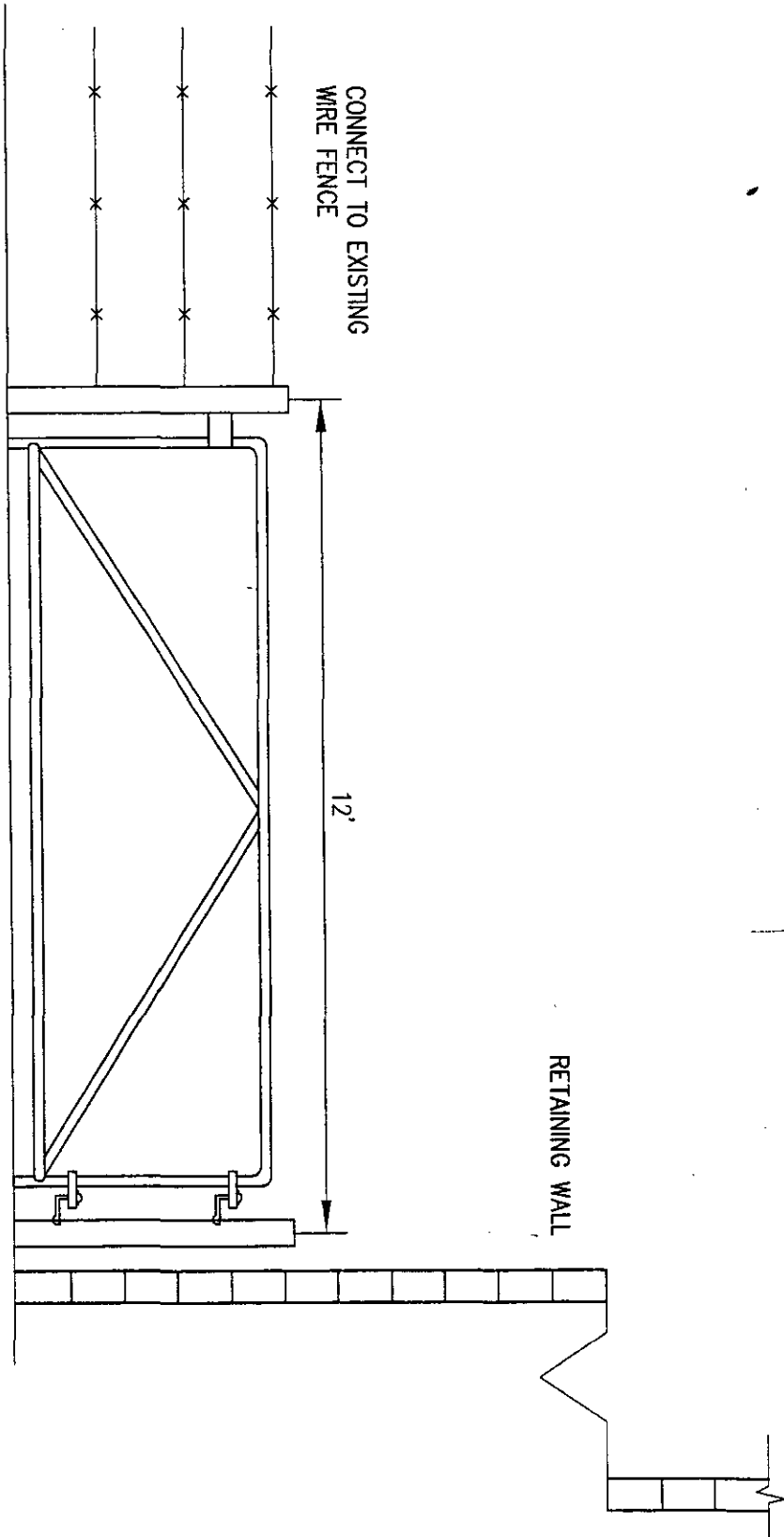
GW-1



NOTE: THIS EXHIBIT IS PRELIMINARY AND IS SUBJECT TO CHANGES DURING FINAL DESIGN AND/OR REVIEW AND APPROVAL BY THE CITY OF OAKLAND.

ALTURA PLACE EXHIBIT

A/E



NOTE: KNOX BOX LOCKING MECHANISMS
TO BE USED ON GATES.

GATE DETAIL

NOT TO SCALE

EVA-3

33 pages of photos

ALTURA PLACE
PHOTOGRAPHS
33 pages

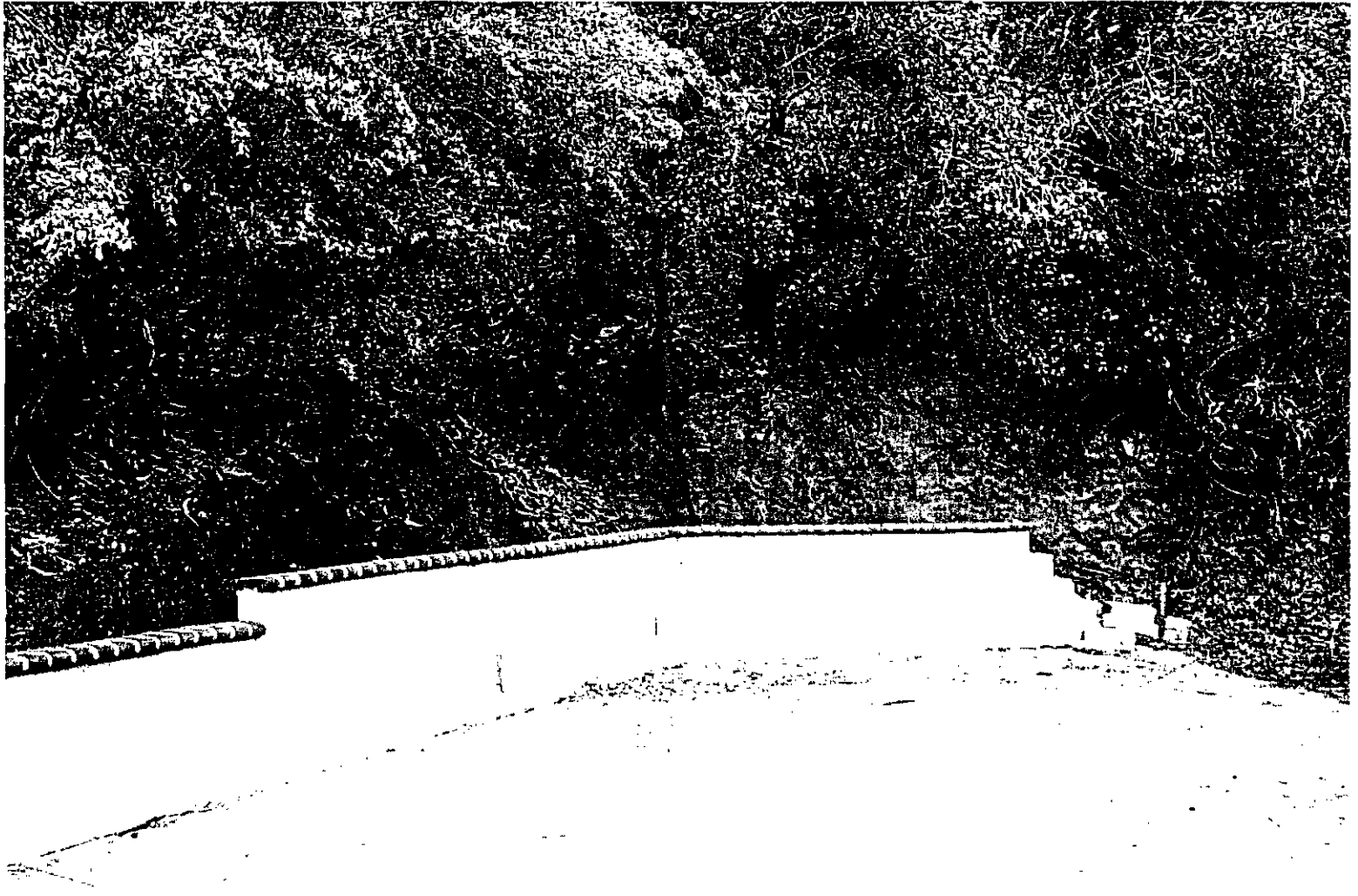


10.11cc
ORA/COUNCIL
JAN 6 2004

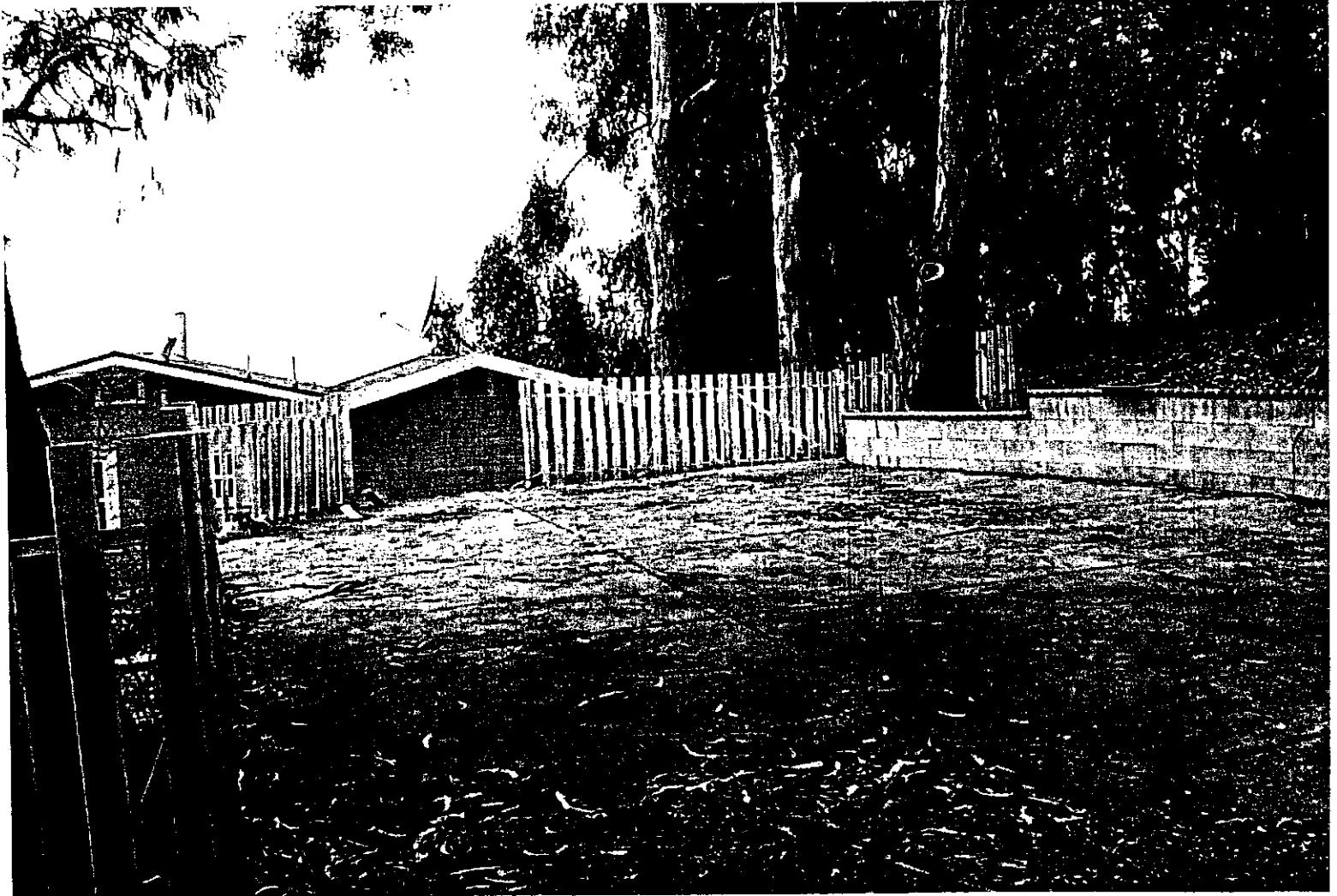


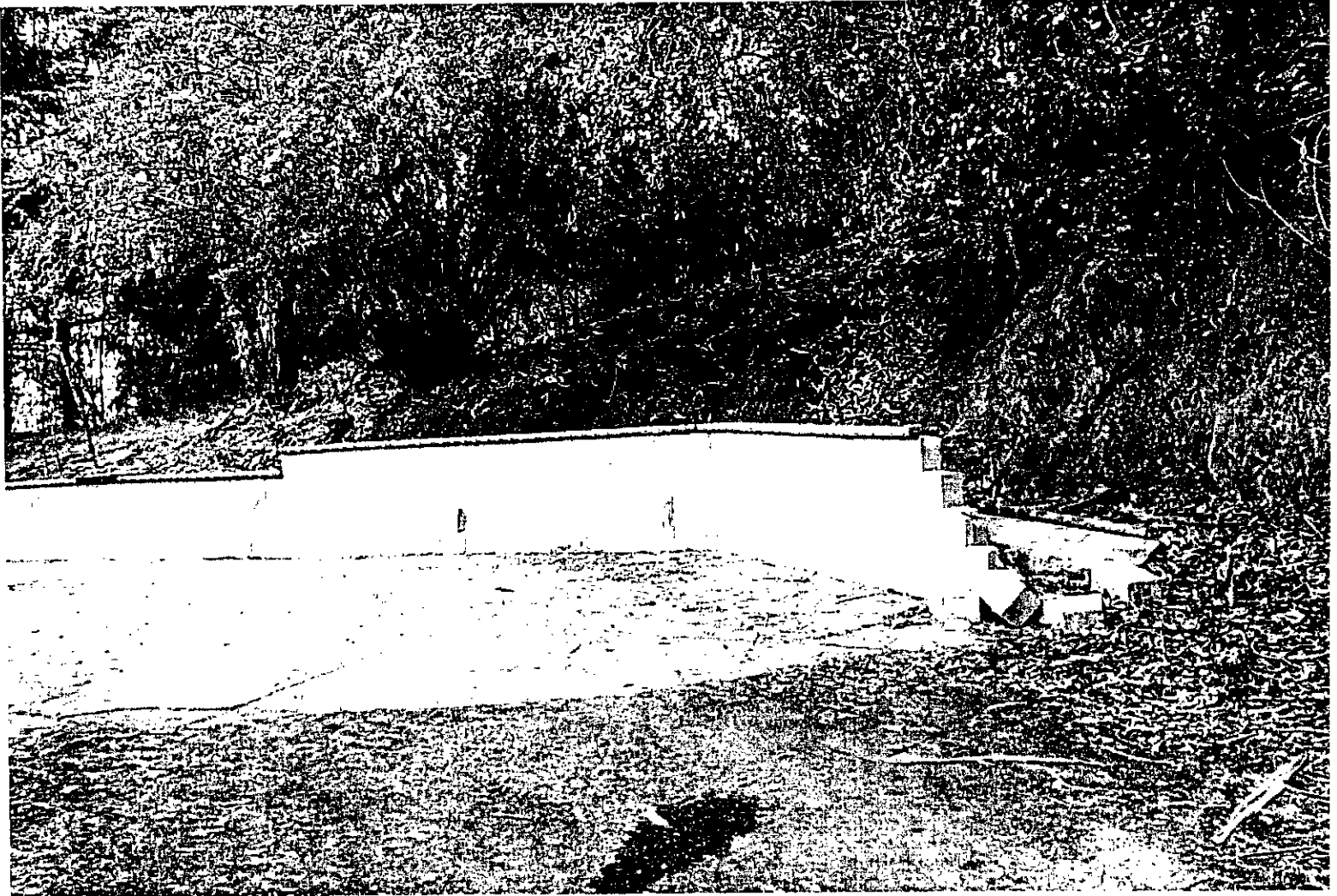




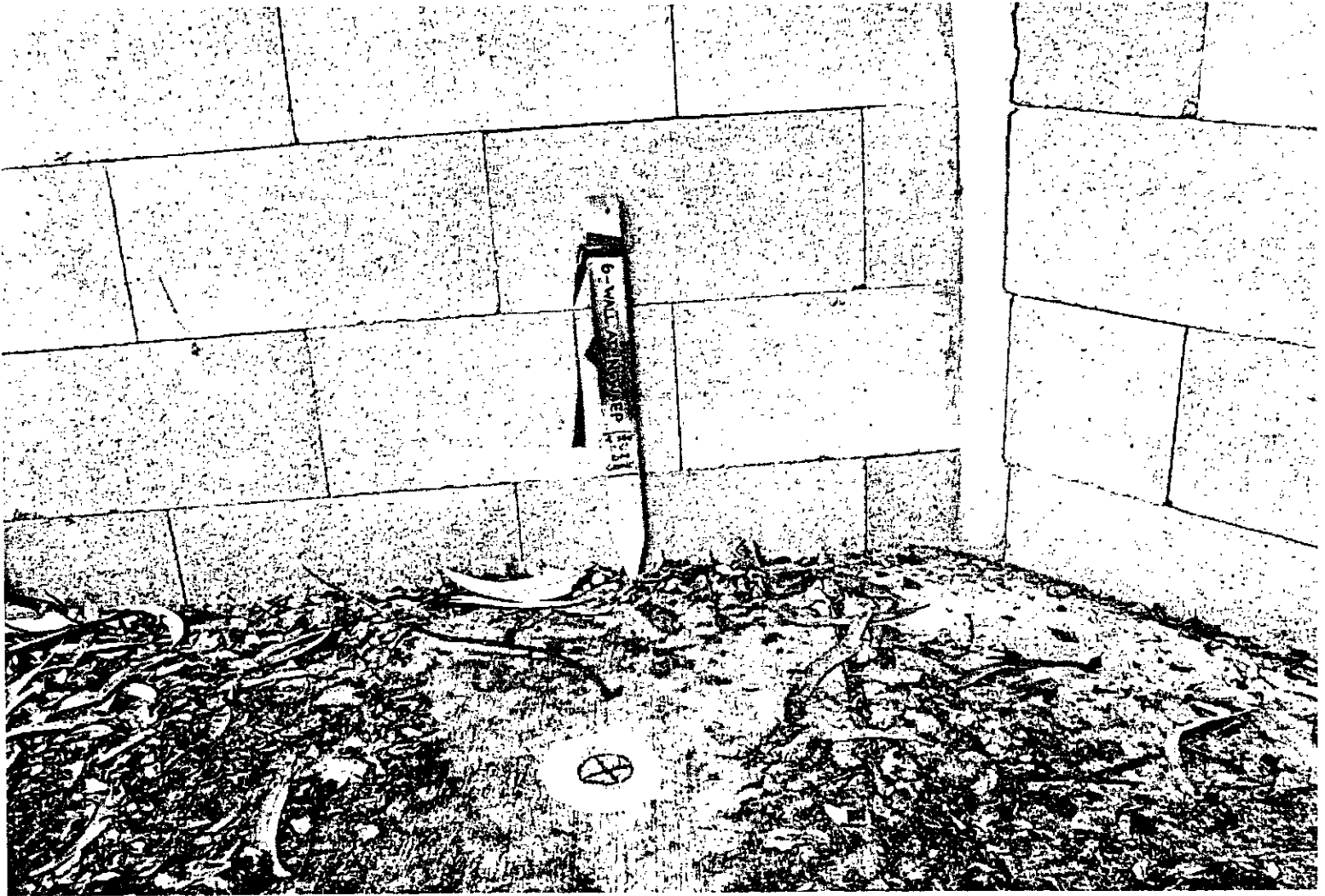


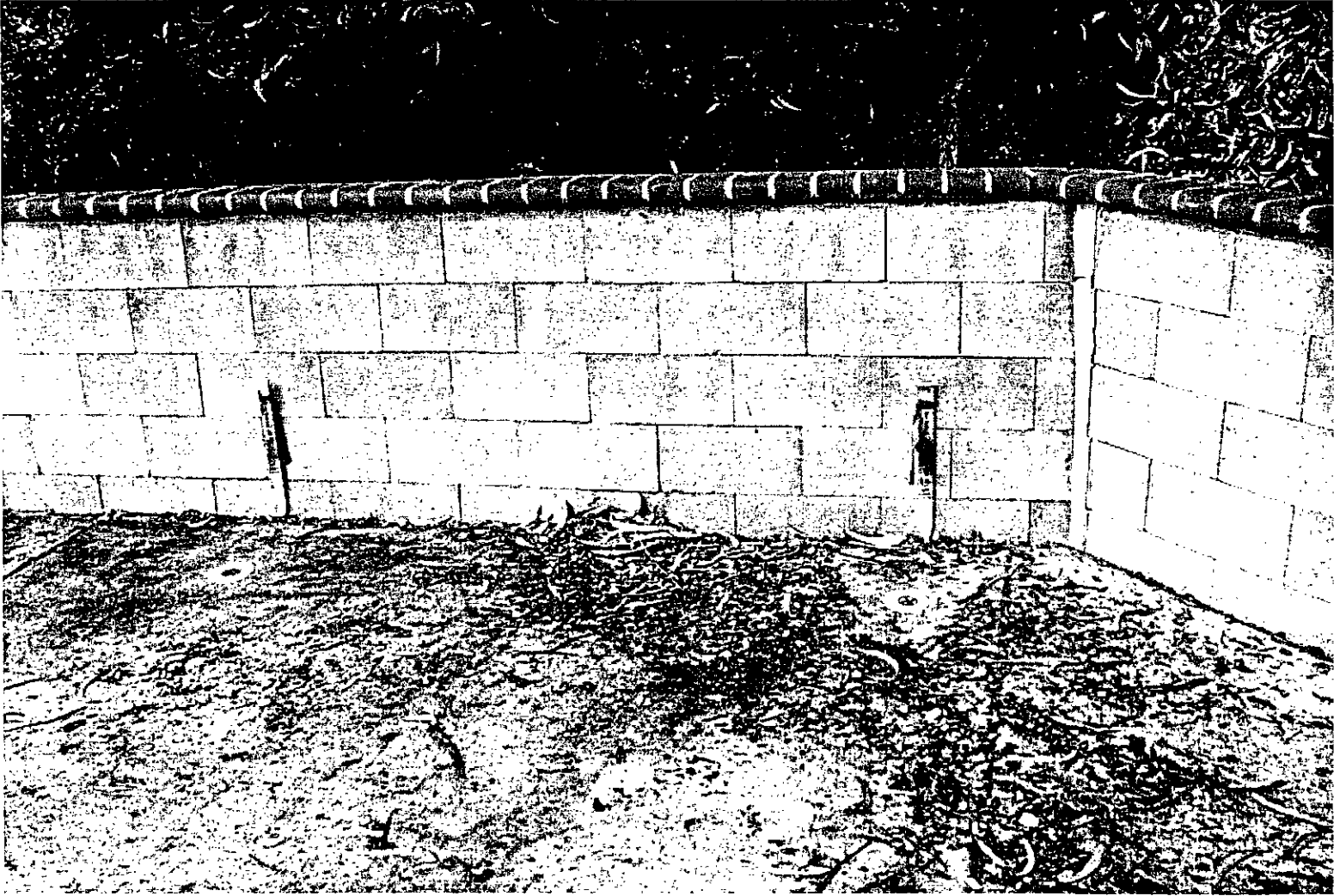


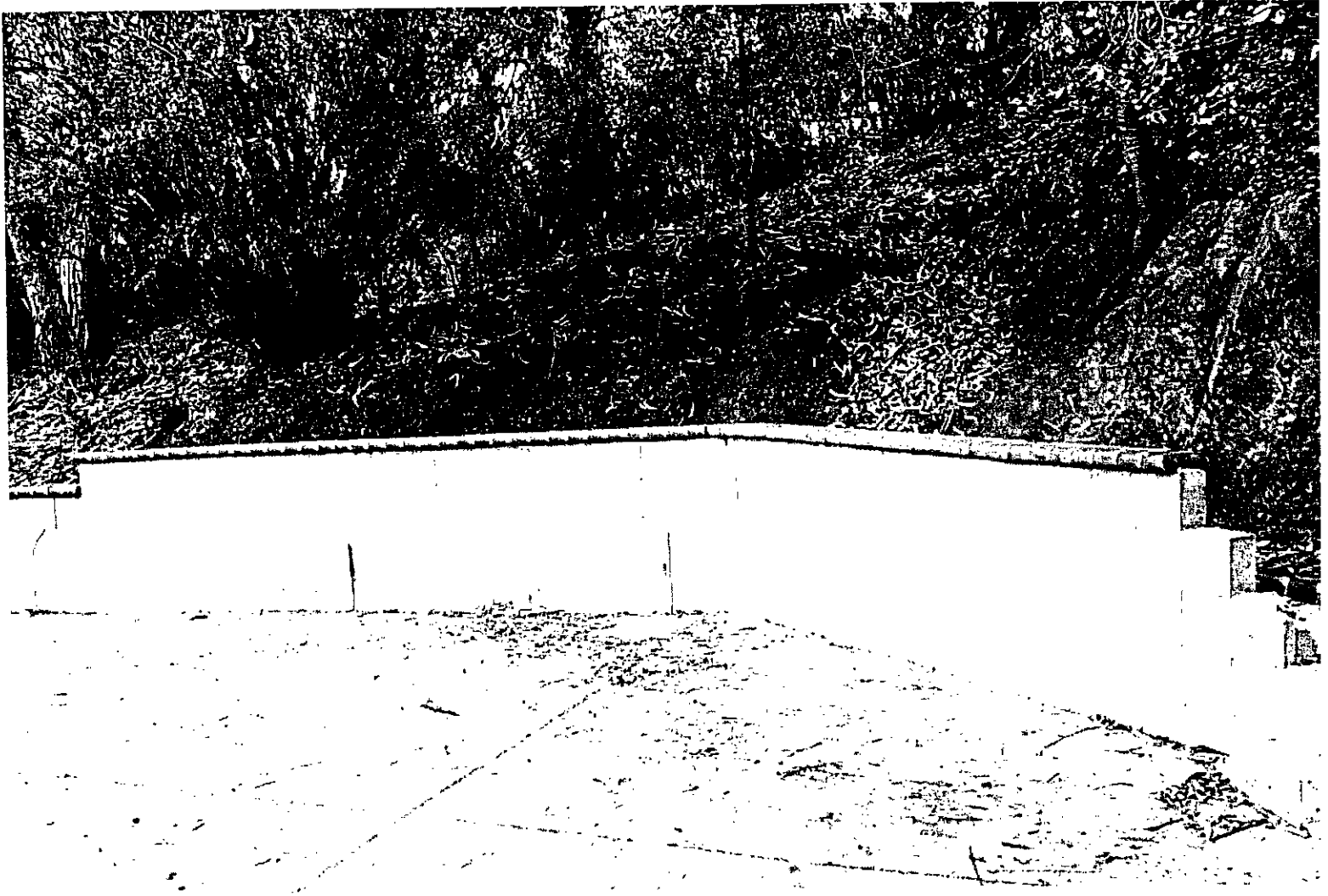




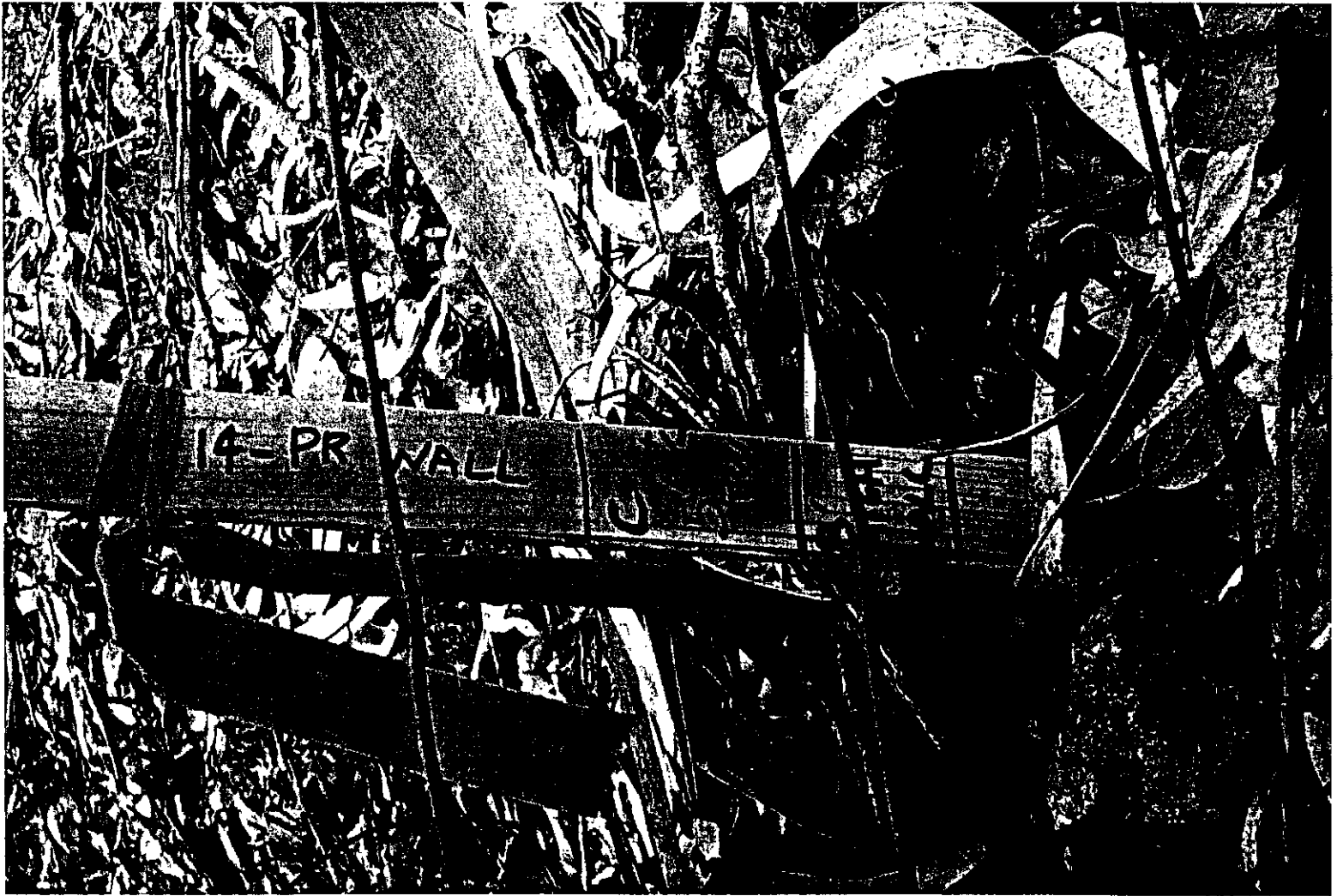










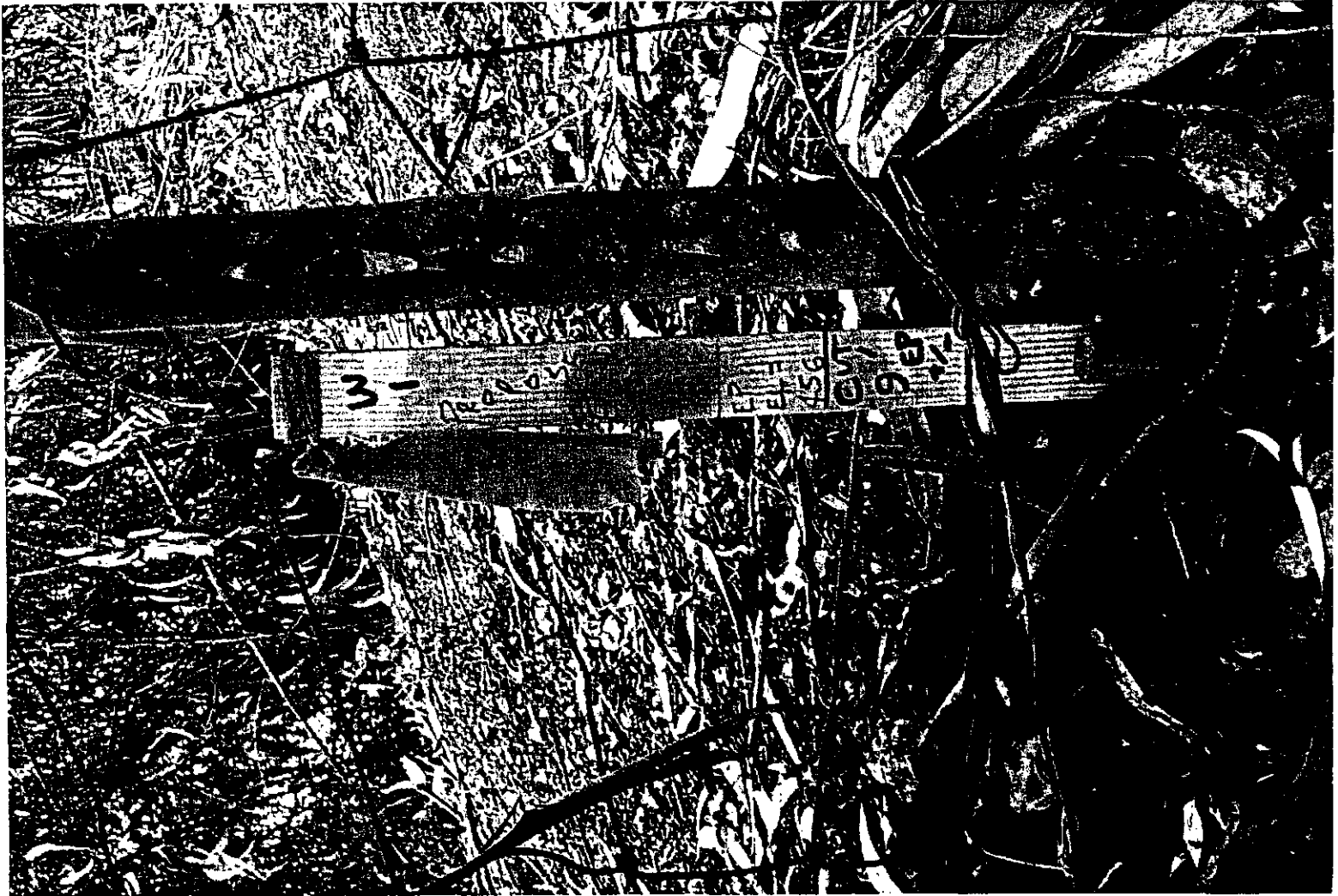


12 - PR WALL

3-13-54
F-03















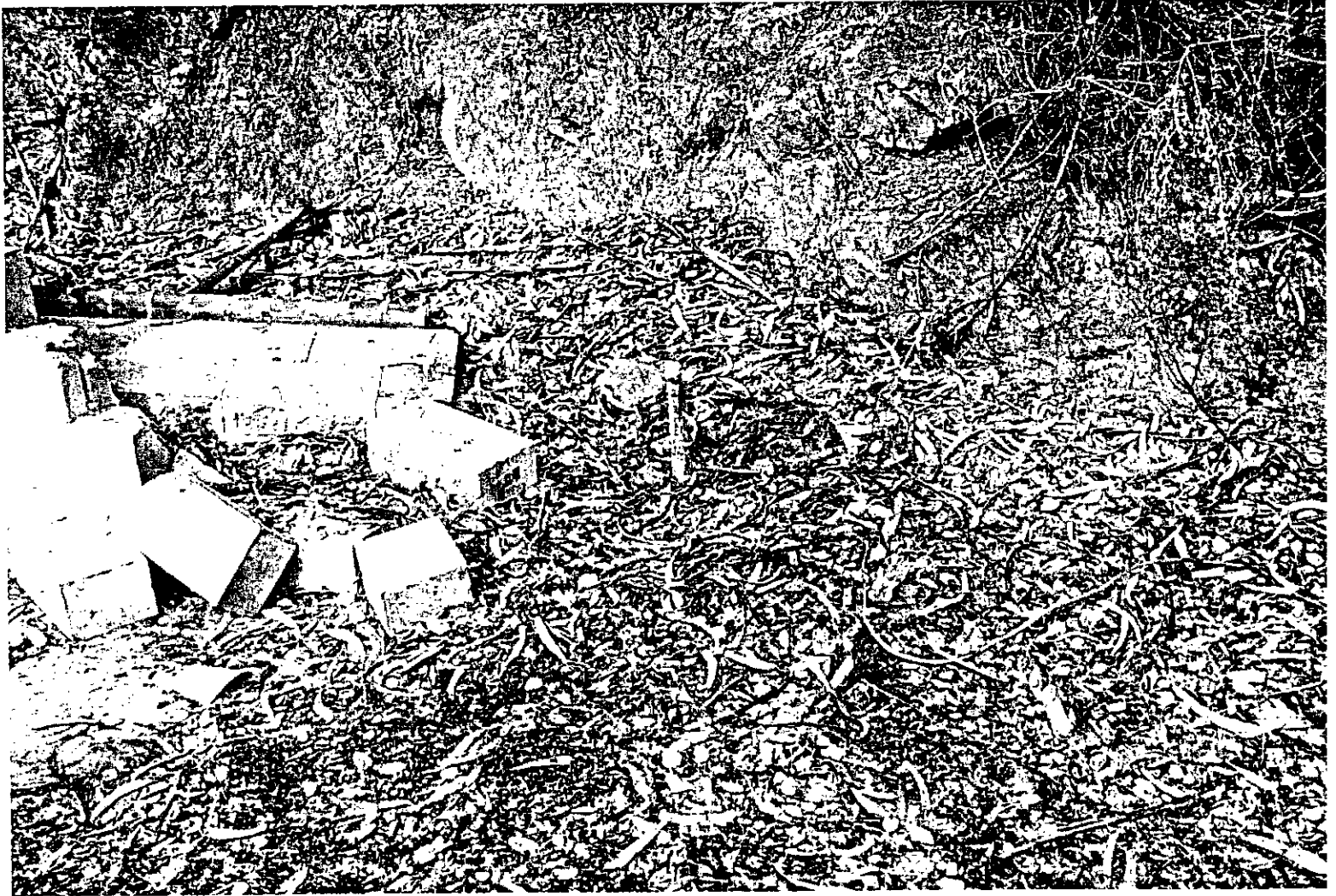






















EVA-4

10.11CC
ORA/COUNCIL
JAN 6 2004

NOVEMBER 12, 2003
JOB NO.: 1020-00

LEGAL DESCRIPTION
ALTURA PLACE
CENTERLINE OF E.V.A. CONSTRUCTION IMPROVEMENTS
OAKLAND, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF ALTURA PLACE, AS SAID ALTURA PLACE IS SHOWN AND SO DESIGNATED ON THE OFFICIAL MAP OF LEONA HEIGHTS ADDITION, RECORDED FEBRUARY 27, 1925, IN BOOK 4 OF MAPS AT PAGE 64, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERN CORNER OF SAID ALTURA PLACE;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE NORTHWESTERN LINE OF SAID ALTURA PLACE, NORTH $51^{\circ}57'18''$ EAST 13.54 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, LEAVING SAID NORTHWESTERN LINE, SOUTH $42^{\circ}12'23''$ EAST 1.71 FEET;

THENCE, ALONG A TANGENT 100.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF $11^{\circ}57'15''$, AN ARC DISTANCE OF 20.86 FEET;

THENCE, SOUTH $67^{\circ}29'03''$ EAST 28.09 FEET TO THE POINT OF TERMINUS FOR THIS DESCRIPTION.

END OF DESCRIPTION

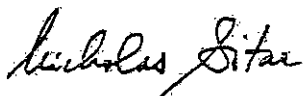
GEOLOGY EXHIBITS

Nicholas Sitar, Ph.D.
64 Donna Maria Way
Orinda, CA 94563

November 15, 2003

To: Mr. Richard Spees

From: Nicholas Sitar, Ph.D.



Re: Review of Geologic and Geotechnical Issues for the proposed Leona Quarry Development

As requested by you, I reviewed the results of the latest geotechnical investigation and the recommendations contained in the May 15, 2003, report prepared on behalf of the DeSilva Group by Berlogar Geotechnical Consultants.

In general, I find the report a substantial addition to the pre-existing information and the recommendations contained in the report are on the whole consistent with the proposed use of the site. Nevertheless, there are still certain technical details of the slope stability analyses and, more importantly, construction and post-construction issues related to slope stability that will require continued monitoring and evaluation. In this review, I first address certain aspects of the slope analyses that I believe are not fully resolved and then I address the issue of what may be the most reasonable approach as the project goes into construction.

Comments on Slope Stability Analyses.

In general, the slope stability analyses, as performed, suggest adequate static and seismic slope stability with respect to the possibility of deep-seated landsliding. This conclusion is consistent with the fact that there is no evidence of deep-seated in the bedrock underlying the quarry slopes. However, the analyses do not reflect the worst possible scenario in all cases, as follows:

1. The strength parameters selected for tuff are at the upper limit of laboratory test data. A lower bound approach would be more reflective of the degree of uncertainty in material parameters. Similarly using a high cohesion and high friction angle for the rhyolite is unconservative. Either the cohesion or the friction angle should be reduced to more conservatively reflect the rock mass behavior.
2. The quarried North Face was analyzed assuming a seismic coefficient of .15. The analysis should be based on determining yield acceleration and then an evaluation of deformations using the Newmark approach.
3. Curved/circular failure surfaces are appropriate for fill slopes and the deformation computations as given in the report are acceptable. However, rock slopes tend to fail along planes and wedges. Thus, planar or by-planar failure surfaces should be analyzed at some point in order to evaluate the possibility of failures along such surfaces. These results should then be used to assess the potential need for slope stabilization using nails or rock bolts.

4. The mitigation measures suggesting the combination of removal and energy absorbing barriers are very appropriate. However, the use of spot or pattern rock bolting should also be included in the mix of possible mitigation measures.

5. The report correctly notes that some of the actual design decisions regarding the treatment of the potential rock fall/rock slide hazard has to be tailored to the actual conditions exposed during construction. This will require a very competent peer review by a CEG (Certified Engineering Geologist) with experience with high rock slopes.

Impact on the Project and Recommendations.

While the above comments suggest that somewhat different and possibly lower factors of safety may indeed exist on some of the rock slopes, there is no evidence that any of the slopes would be likely to experience any significant instability except under the design earthquake event. More importantly, such failures are most likely to involve localized rock falls rather than deep sliding and the mitigation of such hazards involves the same approach regardless of the stage of the project at which they are identified.

Consequently the recommended solution/approach would be to proceed with construction with concurrent detailed mapping of the discontinuities, joints and fractures, on the newly exposed surfaces. This is consistent with the approach proposed by Berlogar Geotechnical Consultants. However, it is important to stress that the purpose of the mapping should be to continue the evaluation of the possible existence of a planar surface that could lead to a general slope failure, to continue identify possible unstable wedges, and to refine the estimate of the maximum likely block/boulder size that could ravel. This information should then be used to refine existing analyses of slope stability, taking into account the technical comments in items 1-3; and, also, it should be used to refine the design parameters for the design of the energy absorbing barriers.

It is important that this process be carefully peer reviewed during all stages (as noted above), since the ultimate treatment of the slopes will be tailored to the final constructed slope conditions. Also, it is important that all parties understand that additional analyses will be necessary during the construction phase and that the results of these analyses coupled with the field observations may require changes in the proposed/expected slope treatment. In some cases, this may result in lesser level of support than originally anticipated, while in other cases substantially greater slope stabilization measures and/or energy absorbing barriers may be required. Therefore, adequate provisions should be made to anticipate the potential financial and scheduling impacts on the project.

Finally, the effectiveness of the proposed slope stabilization measures and the energy absorbing barriers in particular is very much a function of adequate maintenance. Thus, adequate provisions have to be made for access to the up slope side of the energy absorbing barriers in order to clean out the accumulated debris on a periodic basis.

Mike Willcoxon

From: Richard Spees [RLspees@msn.com]
Sent: Sunday, November 16, 2003 2:14 PM
To: 101550@msn.com; Mike Willcoxon; David Chapman; Comact@Oaklandvet.com;
Smalmstrom@earthlink.net; Jim Summers; Pdown@mindspring.com; accsparkz@yahoo.com
Subject: Fw: leona

Attached is the latest Email from Paul Seidelman for discussion this evening. Dick

----- Original Message -----

From: paul seidelman
To: Richard Spees
Sent: Sunday, November 16, 2003 2:01 PM
Subject: leona

Dick,

Thanks for forwarding Dr Sitar's most recent letter. I concur with the points he raises, several of which were raised in my letter of last December and my earlier note today. All of these comments (Dr. Sitar's and mine from December 2002(attached report) and today) must be tracked through the process. A failure to do so could be very costly in personal injury or in unexpected maintenance costs both in the near term and long term management of the project. This is easier said than done because political and administrative control of the project tends to vary depending upon the individuals in authority. The management of the construction and maintenance, inclusive of Dr. Sitar's and my own concerns, is essential to the project's overall success. A long time line with constancy in project oversight is necessary for the success of this project. Finding the correct design for the management of the project will rival the design of the quarry slopes in complexity and importance. I strongly recommend that the engineering issues be tracked in detail at construction permit stage and continuously during construction itself.

- There seems to be close agreement that the stability of the north slope will require some areas of rock bolting and physical modification in addition to the safety fencing. Design details are needed.
- Maintenance access design is essential to remove soil and rock debris manage slopes and to clean drainage facilities.
- Settlement and ground water monitoring plans are needed for all fill areas.
- Estimates for maintenance costs for these and other systems is needed to establish funding of the GHAD district.
- Procedures for tracking geotechnical concerns through the construction phase of the project are needed.

In my opinion all of these concerns can be nullified by careful project management and engineering design.

Sincerely

Paul Seidelman

SEIDELMAN ASSOCIATES, INC.
2427 CHERRY HILLS DRIVE
LAFAYETTE, CALIFORNIA 94549
(925) 930-0646
(925) 930-0828 (FAX)

December 30, 2002

City Of Oakland
Attn: Claudia Cappio
Frank H. Ogawa Plaza, Ste. 3330
Oakland, CA 94612-2032

RE: Leona Quarry

Dear Ms. Cappio:

On December 11, 2002 I met with representatives of the De Silva Group and Berlogar Geotechnical Consultants to discuss the additional geotechnical work necessary to resolve issues in preparation for submission of grading permits for the Leona Quarry PUD. Prior to discussing issues at specific locations, I indicated the City's desire that geologic hazard conditions be reduced to maintenance type items so that the GHAD would be in large part devoted to monitoring and maintenance of hill slope and drainage conditions within the development. I have attempted to group concerns by area starting with parcel C and advancing to the westerly portion of parcel D and so forth.

The parcel C is located along the extreme west flank of the project and is composed of highly man altered terrain mixed with nearly natural terrain, most of the concerns are related to the highly man altered terrain. The higher slopes in parcel C, in the altered portion of parcel C, consists of bare rock exposures that are very steep, exceeding 1:1 in many locations. Two areas that have produced debris torrents, rock raveling and minor rock falls are visible as two grooves in the upper slope with talus fans resting on the Quarry bench below the base of rock outcrop. Immediately north of these evident instabilities, there is a shallow debris slide, both of these instabilities will require mitigation, both to avoid present hazards and to restrict the future potential for instability.

Also present in parcel C is a shallow retention pond, which is no longer accessible to vehicular access for maintenance purposes. It appears that a tractor road formally existed from the main quarry road running northerly across parcel C to the pond. This service road has been obliterated by slide debris originating higher on the slope. The old service road separates the up slope rock outcrop areas from extensive side cast fill deposits that are situated between the service road and the old quarry road. The long-term maintenance of the pond will require equipment access to the pond area. Additionally, the service road for the pond will serve to intercept dry ravel in other slope sediment. The road can also serve to de-water the slope and reduce the amount of surface

run off that would otherwise enter the side-cast fill area. I have asked Berlogar to address these issues in their final report associated with permit applications.

The western portion of parcel D contains severely over steepened man altered terrain, some of which may have produced rock falls, while another area shows evidence of recently active landsliding, both of these issues are of primary concern and will be addressed in the final Berlogar report. Specifically slope stability analysis before and after mitigation is applied to the landslide area. Additionally, proposals for the mitigation of rock fall hazards. Barriers will be designed to retain specific rock sizes and velocities.

The remainder of parcel D consists of significant cuts and fills. The permit report will address issues associated with major cut and fill operations. These will include subsurface drainage, especially as it pertains to the long range performance and reliability of the underdrain system. Special considerations to enhance subdrainage properties will include drainage redundancy, the ability to maintain the drain, and the ability to monitor the performance of the drainage system. It is anticipated that the drainage system will include multiple outlets and the appropriate sweep bend clean outs. Water sampling to determine the presence of sulfate and carbonate ions will facilitate understanding of the potential for long term salt contamination of the drain system. Use of storm drain manholes will also facilitate acid washing of the subdrain if needed.

Additionally, we discussed the potential for short term perched water tables to develop and mitigation of accumulated near surface water by using subdrains as well as concrete lined V-ditches on the construction benches.

The report will discuss the expected amount and timing of consolidation and settlement of the fills and the mitigative effects of the original fill density and moisture content. Ground water, inclinometer and settlement monitoring installations will also be discussed.

We discussed seismic design parameters for both the buildings and the evaluation of slope stability. We have concluded that further research on both our parts may be necessary to arrive at the appropriate accelerations for buildings and slope stability analysis. I am presently comfortable with the 1997 building code. However, the consultant has several papers indicating different ways of addressing seismicity and seismic coefficients. We are going to review these papers during the first few weeks of the year and will keep you advised of our findings.

We have reviewed the consultants work in regards to evidence of active fault rupture on the site and concur that there is no conclusive evidence that fault rupture has occurred in the active past. The shear zone shown in the earlier Golder report was not found as a continuous lineation in the field.

Fault rupture will always remain a hazard because of the close proximity of the Hayward fault. However, absent an identifiable fault trace there is no specific ground to be avoided. The best mitigation then becomes a careful foundation design and structural design.

In areas designated for housing and roadways the effects of non-uniform fill thickness will be analyzed along with other soil conditions that will effect differential settlements within house

foundation perimeters. Final foundation and grading recommendations will be designed to mitigate these problems.

We also discussed home drainage including the need for foundation drains at the perimeter of each building foundation. Subdrainage associated with sidewalks designed to keep near surface water out of pavement base rock was also discussed as a mitigative measure. Additionally, we discussed the potential for storm, water line and sanitary sewer trenches to convey water in undesirable ways. These can be fairly readily mitigated with a subdrain system.

We discussed providing estimations as to the annual maintenance cost associated with surface and subsurface drainage maintenance as well as inclinometer, settlement, and piezometric data collection and analysis. These estimates will assist in providing information to establish funding levels for the GHAD.

During the meeting we discussed the need for professional as well as technical monitoring during construction to ensure that the care taken in developing properly engineered plans is converted into an engineering reality during construction. The developers' consultants will provide recommendations concerning the amount and type of professional and technical monitoring needed during the construction process.

Obviously, we will be available to review these documents as they are submitted and to work with your staff in developing the best possible final designs. Hopefully this letter report will serve as a punch list of items peculiar to this project that should be addressed in final design.

We hope this has provided you with the information you need to proceed in this matter. Should you have any further questions, please don't hesitate to give us a call.

Sincerely,

SEIDELMAN ASSOCIATES, INC.

Paul Seidelman
President
RCE 29683
CEG 1086
GE 761

cc: Frank Berlogar

ORDER AND JUDGMENT EXHIBITS

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA, HAYWARD DIVISION

MAUREEN DORSEY, BURCKHALTER NEIGHBORS
and CITIZENS FOR OAKLAND'S OPEN SPACE, INC.,

Plaintiffs and Petitioners,

v.

CITY OF OAKLAND, OAKLAND CITY COUNCIL,
DOES 1 through 20,

Defendants and Respondents.

THE DeSILVA GROUP, LLC, GALLAGHER
PROPERTIES, INC., DOES 1 through 20.

Real Parties In Interest,
Defendants and Respondents.

No. RG-03077607

STIPULATION FOR ENTRY OF ORDER
DISCHARGING PEREMPTORY WRIT OF
MANDATE AND JUDGMENT ON SECOND
CAUSE OF ACTION

The undersigned parties to the above-entitled action having reached a settlement in this case, through their undersigned counsel, hereby STIPULATE and AGREE that an Order and Judgment that accomplishes the following should be entered in these proceedings:

1. Discharges the Second Amended Peremptory Writ of Mandate, which the Court entered in this action on August 29, 2003.
2. Lifts the stay of the force and effect of the City of Oakland's Ordinance 12457.

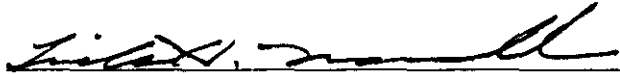
3. Retains jurisdiction over the parties for the purpose of hearing and determining any disputes between the parties relating to compliance with the terms of this Agreement and for the purpose of enforcement of the Agreement.

4. After entering its order retaining jurisdiction over the parties as provided in Paragraph 3, enters final judgment dismissing with prejudice the Second Cause of Action (Unfair Practices Act) in the Complaint and Petition for Writ of Mandamus.

The undersigned parties further stipulate that an Order and Judgment accomplishing these things, when entered by this Court, will fully and finally resolve all claims and all causes of action in this case. Respondent and Real Party request that the Court enter a judgment as attached. Petitioners do not object to the attached judgment.

IT IS SO STIPULATED.

DATED: 12/26, 2003 VENERUSO & MONCHARSH
LAW OFFICES OF JOSEPH BRECHER

By: 
Leila Moncharsh
Attorneys for Petitioners

DATED: _____, 2003 CITY OF OAKLAND; OAKLAND CITY COUNCIL

By: _____
JOHN A. RUSSO, City Attorney
BARBARA J. PARKER, Assistant City Attorney
HEATHER B. LEE, Senior Deputy City Attorney
Attorneys for Defendants and Respondents

DATED: _____, 2003 BINGHAM McCUTCHEN LLP

By: _____
STEPHEN L. KOSTKA
Attorneys for Real Party in Interest
The DeSilva Group LLC

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA, HAYWARD DIVISION

MAUREEN DORSEY, BURCKHALTER NEIGHBORS
and CITIZENS FOR OAKLAND'S OPEN SPACE, INC.,

Plaintiffs and Petitioners,

v.

CITY OF OAKLAND, OAKLAND CITY COUNCIL,
DOES 1 through 20,

Defendants and Respondents.

THE DeSILVA GROUP, LLC, GALLAGHER
PROPERTIES, INC., DOES 1 through 20.

Real Parties In Interest,
Defendants and Respondents.

No. RG-03077607

FINAL JUDGMENT AND ORDER
DISCHARGING PEREMPTORY WRIT OF
MANDATE

Upon review of the City's return to the Second Amended Writ issued by this court on August 29, 2003 ("Writ"), the stipulation of the petitioners, the City, the City Council and the DeSilva Group LLC, and for good cause shown, IT IS HEREBY ADJUDGED, DECLARED, ORDERED, AND DECREED as follows:

1. The City has fully complied with the requirements of the California Environmental Quality Act with the requirements of the Writ. The Writ is hereby discharged.

2. The Court lifts the stay of the force and effect of the City of Oakland's Ordinance 12457.

3. Until presentation of proof of completion of certain improvements as referenced in the settlement agreement between the parties, the Court retains jurisdiction over the parties for the purpose of hearing and determining any disputes between the parties relating to compliance with the terms of this Agreement and for the purpose of enforcement of the Agreement, with such disputes to be presented to the Court by the filing of a noticed motion.

4. Subject to the Court retaining jurisdiction over the parties as provided in Paragraph 3 hereof, the Court issues final judgment dismissing with prejudice the Second Cause of Action (Unfair Practices Act) in the Complaint and Petition for Writ of Mandamus, and directs the Clerk to enter this judgment forthwith.

5. This Final Judgment and Order constitutes a full and final resolution of all claims and all causes of action in this case.

6. All parties shall bear their own costs and fees in this action, except as expressly provided in the settlement agreement between the parties.

Dated: _____

Bonnie L. Sabraw
Judge of the Superior Court

10-11CC
ORA/COUNCIL
JAN 6 2004